

# *Fordham International Law Journal*

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*Volume 21, Issue 5*

1997

*Article 1*

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## Foreign Investment Laws and Regulations of the Democratic People's Republic of Korea

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# Foreign Investment Laws and Regulations of the Democratic People's Republic of Korea

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## **Abstract**

Before presenting a detailed outline of the foreign investment laws and regulations of the DPRK, this Essay surveys the institutional environment in which these laws and regulations function. This Essay concludes with some specific remarks on the rules that pertain to investments in natural resources, including pledge law, and the possibility that foreign investors may be able to negotiate rules governing their investments that would differ from those described in this Essay.

# FOREIGN INVESTMENT LAWS AND REGULATIONS OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

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## INTRODUCTION

Although it was the United States that negotiated the first treaty by a Western nation to open Korea in 1882,<sup>1</sup> U.S. investors who opened and developed the first modern gold mine in what is now the Democratic People's Republic of Korea ("DPRK") in 1895,<sup>2</sup> and U.S. missionaries who first brought Christianity to Korea and whose successors trained Kim Il Sung's father in English and Presbyterian self-reliance at their mission school in that same region of Korea, Americans and North Koreans have been frozen in mutual isolation for over five decades with virtually no opportunity to pursue relations of any kind, including commercial and financial relations.

Since the outbreak of the Korean War in 1950,<sup>3</sup> the United States has enforced a comprehensive set of legal and regulatory restrictions on economic relations with the DPRK, including a nearly total embargo on trade and investment activity.<sup>4</sup> The DPRK showed no apparent interest in engaging in broad international economic relations<sup>5</sup> until after the dissolution of the USSR in 1991, and the consequent loss of concessionary price and payment terms for the trade it had carried on with the USSR.<sup>6</sup>

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1. BRUCE CUMMINGS, *KOREA'S PLACE IN THE SUN: A MODERN HISTORY* 99 (1997).

2. *Id.* at 125.

3. *Id.*

4. Congressional Research Service, *Korea: Procedural and Jurisdictional Questions Regarding Possible Normalization of Relations with North Korea*, 21-31 (1994).

5. *See Id.* at 21.

6. ECONOMIST INTELLIGENCE UNIT, *EIU COUNTRY PROFILE: SOUTH KOREA, NORTH KOREA: 1994-1995* 76 (1995).

Ironically, following a controversy over the DPRK's nuclear capabilities and intentions in 1992-94, that nearly triggered the outbreak of war,<sup>7</sup> the long-standing icy relations between the United States and the DPRK began to thaw. The resolution of this confrontation over the DPRK's nuclear capabilities and intentions was brought about by the intervention of former President Jimmy Carter and the negotiation and signing of the Agreed Framework of October 21, 1994 between the two countries ("Agreed Framework").<sup>8</sup> In that agreement, the DPRK agreed to freeze and eventually dismantle its existing nuclear facilities in exchange for the construction of two light water reactors and the interim supply of heavy oil to cover electric power lost in the transition. In addition to other nuclear and energy related provisions, the two sides agreed to move toward the full normalization of political and economic relations, including the reduction of barriers to trade and investment and the promotion of peace on the Korean peninsula.<sup>9</sup>

The Agreed Framework has proven to be an effective vehicle for reducing tensions, building mutual confidence, and demonstrating the emergence of a more flexible and pragmatic DPRK.<sup>10</sup> Much of its success grows out of the experience of the Korean Peninsula Energy Development Organization ("KEDO"), a consortium originally including the United States, South Korea, and Japan (and now expanded to twelve members including the EU), that was formed to take responsibility for arranging the financing and construction of the two light water nuclear reactors provided for in the Agreed Framework. Although none of the original consortium members recognized the DPRK diplomatically, or had underlying investment or enforcement treaties with it, a complex supply agreement together with six protocols and numerous ancillary agreements, were successfully negotiated. In August 1997, ground breaking for the first part of the US\$5 billion light water reactor construction project was held,

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7. For a discussion of the Democratic People's Republic of Korea ("DPRK") nuclear issue see LEON V. SEGAL, *DISARMING STRANGERS: NUCLEAR DIPLOMACY WITH NORTH KOREA* (1998); DON OBERDORFER, *THE TWO KOREAS: A CONTEMPORARY HISTORY* (1997).

8. For the text of the Agreed Framework, see SEGAL, *supra* note 7, at 262-264.

9. *Id.*

10. Albright, Remarks at the ASEAN Regional Forum (July 27, 1997) (USIA Transcript).

an event that clearly signaled the DPRK's willingness and ability to live up to its commitments. In late March 1998, Paul Cleveland, the Chairman of KEDO's executive board and its U.S. representative, confirmed that this adherence to contractual commitments by the DPRK in furtherance of the KEDO project was ongoing.<sup>11</sup>

The success of the KEDO experience has encouraged other efforts to overcome the legacy of war and hostile division on the Korean peninsula. On June 25, 1997, forty-seven years to the day the Korean War broke out, the four principal combatants, including the United States, the Republic of Korea, the People's Republic of China, and the DPRK, agreed to discuss bringing closure to that conflict by negotiating the replacement of the current armistice with a formal peace accord.<sup>12</sup> Since then, two formal plenary sessions of the Four Party Talks have been held in Geneva.<sup>13</sup> Following up on a proposal presented by the DPRK delegation at the last session of the Four Party Talks in March 1998, for the first time since 1994, the DPRK and the Republic of Korea agreed to hold bilateral talks on economic relations.

Additional evidence of a more open and pragmatic attitude by the Pyongyang government is found in the following list of recent actions:

- the issuance of an unprecedented apology for the submarine intrusion incident,
- an open appeal for food aid to the international community and its acceptance of food aid from the United States and South Korea,
- an agreement to hold talks on missile proliferation,
- permission given to U.S. officials to search for remains of Korean War servicemen,
- permission for Japanese wives of Koreans to visit their families in Japan, and
- an agreement with South Korea to establish a divided family locating center.

Paralleling this shift of behavior in the political realm,

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11. Peter Montagnon, *Supplier Seeks N. Korean Cash*, FIN. TIMES, Mar. 26, 1998.

12. *North Korea Agrees to Peace Talks*, ASSOCIATED PRESS, June 25, 1997.

13. Alexander G. Higgins, *North Korea, South Korea Open Peace Talks*, ASSOCIATED PRESS, Dec. 9, 1997; *US Reports Progress in Korea Peace Talks*, REUTERS, Mar. 18, 1998.

North Korea has pursued a plan to attract foreign investors and new trading relationships that might help it rebuild its stagnant economy and raise its living standards without threatening its independence or distinctive social system. Following the collapse of the Socialist Bloc in 1991, an effort was mobilized to prepare the legal and physical infrastructure for an initial free trade zone based on the Chinese model. The initial free trade zone was to be established in the northeast corner of the country bordering China and Russia. The Rajin-Sonbong Golden Triangle zone, which opened for business in 1995, is targeted to attract transit and export processing activity from neighboring countries, as well as other investments attracted by seaport, railway, and river transport facilities and convenient access to natural resource supplies and markets in the hinterlands of the Tuman River delta. To date, over US\$250 million of mostly Swedish, Hong Kong, and Japan resident Korean investment has been committed to the zone, and a foreign joint venture bank, managed by ING Bank, has set up a branch there.

North Korea now appears to be prepared to accelerate its economic opening program. During the visit of an official DPRK investment and trade promotion delegation in January 1998, Kim Mun Sung, Chairman of the Korea Committee for the Promotion of International Trade stated as follows:

My country today, has, in fact, no restrictions on the development of economic and trade relations with the U.S. from a legal point of view. Rather, favorable conditions for development of economic and trade relations are being created by the measures taken by the [DPRK] Government . . . . The Government of the [DPRK] has set a forward looking objective to develop this [Rajin-Sonbong] zone into an integrated area with international transit trade, transportation depot, export processing, tourism, and financial Service center functions . . . .<sup>14</sup>

Further indication of this policy shift was found by the authors of this Essay, who met with government officials on a week-long visit to the DPRK in early June 1997. Discussion at our meetings focused on the prospects for investment by U.S. mining companies in mines and mineral processing facilities located

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14. Kim Mun Sung, DPRK-U.S. Economic Relations, Remarks at the Council on Foreign Relations (Jan. 26, 1998).

in a two-county area adjoining the Port of Danchon on the east coast of the DPRK. This area, it was proposed, would be constituted as a new free trade zone, with investment opportunities to be offered on a preferential basis to U.S. companies.

As a first step in assessing the feasibility of this proposal, the authors undertook a review of the available legal infrastructure and commercial and tax incentives for foreign investment in the DPRK, paying special attention to the DPRK mining sector.

In evaluating the merits of any investment opportunity in the DPRK, it is relevant to understand what motives may be driving the proposed preferential investment incentives being offered to U.S. interests in particular. In the course of the diplomatic process leading up to the Four Party Talks, as well as in recent discussions with American visitors, North Korean government officials have made no secret of their commitment to pursuing a strategy intended to build a strong security and economic alliance with the United States. Such an alliance, it is explained, would serve as a means of protecting North Korea from military or economic takeover by their neighbors to the south and as one cornerstone for building a new regional framework for peace, security, and economic development in northeast Asia. It has been suggested that trading a reduction of its threatening military capacity in exchange for a U.S. security guarantee and assistance to rebuild its economy may be seen as a good bargain to help ensure survival of an independent DPRK.<sup>15</sup>

Indeed, President Clinton may have been encouraging such thinking by publicly imploring North Korea on April 25, 1997, to enter peace talks in order to permit the United States and others "not only to give emergency food aid - because people are terribly hungry - but to work with them in restructuring their entire economy and helping to make it more functional again . . . ."<sup>16</sup> Without a process of economic rehabilitation that narrows the wide gap in living standards between the northern and southern parts of the Korean peninsula, the prospects of a soft-landing reconciliation and peaceful integration of this divided land may

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15. Meetings with Kim Gye Gwan, Vice Minister of Foreign Affairs of DPRK, and Pak Myong Guk, Section Chief, Department of American Affairs, Ministry of Foreign Affairs of DPRK (June 3-10, 1997, in Pyongyang, DPRK).

16. *N. Korean Jeopardizing Famine Aid*, ASSOCIATED PRESS, April 25, 1997 (quoting President Bill Clinton).

not be promising.<sup>17</sup> While fulfilling ordinary business objectives, U.S. investment might also contribute to the prospects of peace and economic development in this region.

One threshold issue confronting any prospective U.S. investor in the DPRK is the existing regime of U.S. commercial sanctions that currently prohibit any form of investment in the DPRK.<sup>18</sup> While no concrete advance commitments have been announced, it may be reasonable to assume that progress in the Four Party Talks will lead to various normalization steps, including diplomatic recognition and the progressive lifting of economic sanctions. In view of the DPRK's priority interest in promoting U.S. investment in its mining sector, it is not unlikely that sanctions in this area will be lifted on an expedited basis.

Reports of widespread famine and predictions of the imminent collapse of the DPRK raise additional questions for prospective investors concerned with the long-term economic viability of the country as an investment counterparty. While some commentators predict the inevitable collapse and reunification of the country with South Korea,<sup>19</sup> others, such as Marcus Noland in the July/August 1997 *Foreign Affairs*, argue that North Korea has the economic and political staying power to at least "muddle through" its current crisis without making any radical reforms.<sup>20</sup> With a population conditioned by nearly two generations of tight discipline and inculcated with an ideology of heroic self-sacrifice and passionate resistance to threats to its autonomy, a breakdown in social order may be highly unlikely without much greater economic strain and a lifting of controls on information flows.<sup>21</sup> As Noland further argues, collapse and involuntary reunification would involve too much cost and risk for all the parties concerned. On the other hand, "the reform option offers potentially enormous payoffs."<sup>22</sup>

Before presenting a detailed outline of the foreign invest-

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17. Robert A. Manning, *Averting a Korean Meltdown: A Strategy for the Endgame*. (Progressive Policy Institute, Policy Report, 1997).

18. See *supra* note 4.

19. Nicholas Eberstat, *Hastening Korean Unification*, FOREIGN AFFAIRS, Mar./Apr. 1997, at 77-92.

20. Marcus Noland, *Why North Korea Will Muddle Through*, FOREIGN AFFAIRS, July/Aug. 1997, at 105-18.

21. *Id.* at 110.

22. *Id.* at 111.



ment laws and regulations of the DPRK,<sup>23</sup> this Essay surveys the institutional environment in which these laws and regulations function. This Essay concludes with some specific remarks on the rules that pertain to investments in natural resources, including pledge law, and the possibility that foreign investors may be able to negotiate rules governing their investments that would differ from those described in this Essay.

While the authors attempt in this piece to describe some important legal developments in the DPRK and the opportunities they may present to foreign investors, some caveats are appropriate at the outset:

- The authors have no formal education in DPRK law, nor are they qualified to practice this law. Moreover, the formulation that the DPRK's government policy has not always been transparent to foreign observers, and law and legal policy are no exception.
- The DPRK may issue legislation (including parliamentary enactments, presidential decrees, decisions of the government and regulations of administrative authorities) that may be "secret" in whole or in part. If experience in other socialist states in transition is any guide, "secret" legislation may concern industrial and commercial assets that are historically linked to the defense industry and may circumscribe the ability of management of such enterprises to deal with foreigners or to encumber or transfer their assets.
- The law of the DPRK does not include clear rules stating the hierarchy of legal authority and which legal authority must be deemed to control in the event of a conflict. As a consequence, investors may have to be aware of a broader spectrum of legal sources and may need to anticipate and seek resolution of differences between sources of law. This situation may be complicated if there is difficulty in discovering law on administrative procedures that establishes when and how administrative organs can issue decisions and regulations and what recourse exists to challenge them.
- The DPRK has a socialist legal system, and the foreign investment legislation described here must be generally understood as a series of exceptions to that system. The socialist legal sys-

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23. See *infra* Exhibit A.

tem may have important ramifications or even direct applications for foreign investors. For instance, by analogy again to other socialist legal systems, many routine matters, such as making a loan, to an employee or charging interest on such loan might be sanctionable under the criminal code. The workers' collective and local Workers Party may have privileges and prerogatives that will strike an entrepreneur as strange.

- The Workers Party enjoys a constitutional role in North Korea as a protector of the rights and interests of the working class. While we know very little about the North Korean court system, the experience of other socialist countries suggests that party officials may intervene in cases of interest to them and dictate the outcome of such cases. Further, the scarcity of foreign investment in North Korea to date suggests that North Korean courts have little experience interpreting or enforcing financial agreements or foreign investment contracts. All of these considerations may lead foreign investors to be circumspect about any agreement to accept dispute resolution in the courts or arbitration bodies of North Korea.

## I. *GOVERNMENTAL STRUCTURE*

### A. *Legislative Branch*

#### 1. The Supreme People's Assembly

Under the Socialist Constitution of the Democratic People's Republic of Korea ("Constitution"), the Supreme People's Assembly ("SPA") is the highest organ of state power.<sup>24</sup> The deputies of the SPA are elected every five years on the "principle of universal, equal and direct suffrage by secret ballot."<sup>25</sup> Under the Constitution, the SPA has the authority to amend the Constitution, adopt laws and ordinances, and establish the basic principles of the State's domestic and foreign policies.<sup>26</sup> Other powers include the ability to deliberate and approve the State budget, the power to decide on ratification and nullification of treaties suggested to the SPA, and the responsibility of deciding questions of war and peace.<sup>27</sup> Additionally, the SPA purportedly has

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24. See Socialist Constitution of the Democratic People's Republic of Korea, art. 87 [hereinafter Constitution].

25. *Id.* art. 89.

26. See *id.* art. 91.

27. See *id.*

the sweeping authority to elect or recall the President of the DPRK as well as the Vice President, all the members of the National Defence Commission, the members of the Central People's Committee, the members of the Standing Committee of the SPA, the President of the Central Court, and all of the members of the Administration Council.<sup>28</sup> Thus, under the provisions of the Constitution, all other branches are held accountable to the SPA, and the ultimate power is in the hands of the people of the republic which the SPA represents.<sup>29</sup>

## 2. The Standing Committee

The Standing Committee acts in place of the SPA taking most of the responsibilities of the SPA when the SPA is not in session.<sup>30</sup> Considering that the SPA is in session once or twice a year upon the direction of the Standing Committee,<sup>31</sup> the Standing Committee may essentially be the legislative branch of the government depending on how long each session of the SPA lasts. The Standing Committee consists of the Chairman, Vice-Chairmen, Secretary, and members, all of whom are elected by the SPA for five year terms.<sup>32</sup>

### B. *Executive Branch*

#### 1. President

The President of the DPRK acts as the Head of State and represents the DPRK.<sup>33</sup> Technically, the SPA has the power to elect the President every five years.<sup>34</sup> Under the Constitution, the President heads the Central People's Committee as well as when necessary the Administration Council.<sup>35</sup> Additionally, the President retains the power to promulgate the laws, ordinances, and decrees of the various branches of government,<sup>36</sup> as well as his own power to issue edicts and grant special pardons.<sup>37</sup> Con-

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28. *See id.*

29. *See id.* art. 4.

30. *See id.* arts. 100-101.

31. *See id.* art. 92.

32. *See id.* art. 100.

33. *See id.* art. 105.

34. *See id.* art. 91.

35. *See id.* art. 107.

36. *See id.*

37. *See id.* arts. 107-108.

stitutionally, the President is held accountable to the SPA.<sup>38</sup>

## 2. Central People's Committee

The Central People's Committee ("CPC"), consisting of the President, two vice presidents, the CPC secretary, and other unspecified members,<sup>39</sup> acts as the highest leadership body of state power in the DPRK.<sup>40</sup> Among its duties and authority, the CPC is responsible for formulating domestic and foreign policies, directing the work of the Administration Council, directing the judiciary, ensuring the enforcement of the Constitution and other laws, appointing or removing the members of the Administration Council, establishing or changing administrative subdivisions, and ratifying or abolishing treaties signed with foreign countries.<sup>41</sup> The CPC, like all of the other offices in government, is held accountable to the SPA.<sup>42</sup>

## 3. Administration Council

The Administrative Council ("AC") is the highest administrative arm of the government and works under the guidance of the President and the CPC. The Premier, Vice-Premiers, Chairmen, Ministers, and other members, all with terms of five years, make up the AC.<sup>43</sup> The AC directs the work of Commissions, Ministries and local committees, initiates plans for national economic development, runs the general operations of government, concludes treaties with foreign governments, and safeguards the rights of the people.<sup>44</sup>

## 4. National Defence Commission

The National Defence Commission ("NDC") acts as the highest military leadership body of the DPRK.<sup>45</sup> The NDC consists of the Chairman, First Vice-Chairman, Vice-Chairmen, and other Members.<sup>46</sup> This commission has the power to direct and

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38. *See id.* art. 109.

39. *See id.* art. 119.

40. *See id.* art. 117.

41. *See id.* art. 120.

42. *See id.* art. 123.

43. *See id.* art. 125.

44. *See id.* art. 136.

45. *See id.* art. 111.

46. *See id.* art. 112.

command the armed forces, as well as to proclaim a state of war and mobilization order in case of emergencies.<sup>47</sup> The NDC also has the power to issue decisions and orders,<sup>48</sup> presumably dealing with matters of national security, though it is not specified.

## 5. Agencies That Regulate Foreign Trade and Investment

### a. External Economic Authority of the Administration Council

The External Economic Authority of the Administration Council ("EEA") is the main body that regulates foreign trade on the national level. All businesses with foreign interests and a requisite amount of investment must be approved by the EEA in order to operate within the DPRK.<sup>49</sup> In addition to having the final say in determining the various forms of foreign enterprises allowed to operate in the DPRK, the EEA exercises authority over a broad range of matters such as approving the establishment of branch and representative offices,<sup>50</sup> reviewing applications for foreign workers to fill skilled and management positions,<sup>51</sup> and supervising the making and performance of external economic contracts.<sup>52</sup>

Administratively, the EEA is split into two bureaus. The External Economic Cooperation Bureau supervises the operations within the Free Economic Trade Zone ("FETZ"),<sup>53</sup> while the Joint Venture Bureau handles all of the matters outside of the

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47. *See id.* art. 114.

48. *See id.* art. 115.

49. All foreign invested enterprises with investments in infrastructure projects over 10 million Won and other investments over 20 million Won must be approved by the EEA. *See, e.g.*, Implementing Regulations on Contractual Joint Ventures, art. 21 [hereinafter CJV Regulations]. All other foreign invested enterprises with investments under these amounts must apply to the authority in the Free Economic Trade Zone ("ZA") for approval. *See id.*

50. *See* Law of the Democratic People's Republic of Korea on Foreign Enterprises, art. 10 [hereinafter Foreign Enterprises Law]; Regulations on Resident Representative Offices of Foreign Business in the Free Economic and Trade Zone, art. 10 [hereinafter Representative Offices Law].

51. *See* Labour Regulations for Foreign-Invested Businesses, art. 4 [hereinafter Labour Regulations].

52. *See* Law of the DPRK on the External Economic Contract, art. 6 [hereinafter External Economic Contract Law].

53. The FETZ is located in the northeast corner of the DPRK (Ranjin-Sonbong). Additionally, the DPRK is planning additional zones near Sinuiju, Nampo and Wonsan. *See* BRENDON A. CARR, ENDING THE HERMIT KINGDOM'S BELLIGERENT MENDICANCY: NEW OPENNESS, NEW FOREIGN DIRECT INVESTMENT LAWS OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA 10 n.72 (1997).

FETZ.<sup>54</sup> Further, within these two bureaus are the Committee for the Promotion of External Economic Cooperation ("CPEEC") and the Joint Venture Group, respectively.<sup>55</sup> Both of these subdivisions are state enterprises established to promote foreign investments in the FETZ and other areas of the DPRK.<sup>56</sup>

b. Committee for the Promotion of External Economic Cooperation

One researcher has used this name in place of the EEA and essentially uses the office of the Committee for the Promotion of External Economic Cooperation ("CPEEC") to describe the role of the central government in the area of foreign trade and investment.<sup>57</sup> This appears to be incorrect. Meetings with high ranking officials revealed that the CPEEC is actually a subdivision of the EEA set up to promote foreign investments within the FETZ.<sup>58</sup>

c. Free Economic Trade Zone Authority

According to the Law on the FETZ ("FETZ Law") the Free Economic Trade Zone Authority ("Zone Authority") is the local executive organ of the FETZ.<sup>59</sup> Because the FETZ has been specially established by the State under the FETZ Law, the Zone Authority essentially operates as the local Administrative and Economic Committee of the province.<sup>60</sup> The FETZ Law holds that the State directs the operation of the FETZ through both the EEA and the Zone Authority.<sup>61</sup> Because the laws and regulations dealing with foreign investments and trade distinguish the separate roles of the EEA and the Zone Authority, the Zone Au-

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54. See Meetings with Mr. Ho Dae Hyun, Department Director of the Mining Industry, Mr. An Gee Un, Director of the External Economic Commission, and Mr. Chong Chol Gwan, Chief of Division for Law Regulatory Office (June 4-6, 1997, Pyongyang, D.P.R.K.) [hereinafter Meetings].

55. See *id.*

56. See *id.*

57. See Timothy J. Min, II, North Korean Foreign Investment Laws: Foundation for Foreign Economic Relations 22 (1996) (unpublished manuscript, on file with the *Fordham International Law Journal*).

58. See Meetings, *supra* note 54.

59. See Law of the Democratic People's Republic of Korea on Free Economic and Trade Zone, art. 8 [hereinafter FETZ Law].

60. See *id.* arts. 2-3.

61. See *id.* art. 3.

thority is presumably under the direct authority of the AC rather than the EEA, but this is not entirely clear.

Along with the EEA, the Zone Authority exercises the main authority over foreign trade and investments within the FETZ. Specifically, the Zone Authority's mandate is to "organize and implement the development and economic administrative and operational activities" in the FETZ.<sup>62</sup> The duties of the Zone Authority include carrying out administrative and economic activities, maintaining order and protecting people and property, reviewing applications for foreign investments not reviewed by the EEA, registering enterprises and issuing business licenses, employing workers in enterprises, leasing land and buildings, rendering construction services for buildings, and conducting activities that generally promote investment and improvements in the FETZ.<sup>63</sup> In addition, the Zone Authority is cited in other laws and regulations granting the Zone Authority discretion over a broad range of matters in foreign investment and trade such as establishing a technical training fund and center within the FETZ,<sup>64</sup> regulating and approving advertisements within the FETZ,<sup>65</sup> and supervising the registration of agents for foreign invested enterprises.<sup>66</sup> The random and varied nature of the assignments of both the EEA and the Zone Authority do not seem to provide any apparent order or rationale for determining which matters are governed by the EEA and which are under the Zone Authority.

#### d. Provincial and Local Authorities

The Constitution establishes the People's Assembly and the Administrative and Economic Committee ("AEC") of each province and city as the local analogues, respectively, to the SPA and the AC.<sup>67</sup> With regard to governing aspects of foreign investments and trades, the regulations that address the naming and registration of foreign invested enterprises provide that AEC's

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62. *Id.* art. 11.

63. *See id.* art. 12.

64. *See* FETZ Law, *supra* note 59, art. 15.

65. *See* Regulations on Advertisement in the Free Economic and Trade Zone, art. 4 [hereinafter Regulations on Advertisement].

66. *See* Regulations on Agent for Foreign Investor in the Free Economic and Trade Zone, art. 11 [hereinafter Regulations on Agent].

67. *See* Constitution, *supra* note 24, §§ 6-7.

will handle these matters.<sup>68</sup> But, outside of these duties and the many special duties granted to the Zone Authority in the FETZ, the laws and regulations are generally silent on the role of local authorities in supervising foreign investment matters.

### *C. Judicial Branch*

Three levels exist in the North Korean court system.<sup>69</sup> The People's Courts make up the lowest level, the Court of the province or municipality act as the intermediate level courts as well as the courts of first instance for special cities directly under central control, and the Central Court, consisting of two associate chief judges, stands as the highest court of appeal.<sup>70</sup> Under the Constitution, the functions of the Court are to protect the State power and the socialist system, ensure that all abide strictly by State laws, give judgments and findings with regard to property, and conduct notarial work.<sup>71</sup> The Court purportedly operates independently in administering justice.<sup>72</sup> Yet at the same time, the Central Court is "*guided*" by the CPC, the main executive body.<sup>73</sup> Thus, the actual independence of the courts, even under the Constitution, is questionable.

The laws and regulations on foreign investments often refer to the court system of the DPRK as a secondary option if consultation between the disputing parties does not work out. Unfortunately, these laws and regulations do not provide any further elaboration on the workings of the court system or even which court would have original jurisdiction over a dispute arising from foreign investment claims. Cases from the FETZ would most likely be heard by a provincial or municipal court because the FETZ is an area under the direct control of the central government, but the status of cases arising outside of the FETZ remains uncertain.

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68. See Regulations on Naming of Foreign-Invested Enterprises, art. 3 [hereinafter Regulations on Naming]; Regulations on the Registration of Foreign-Invested Enterprises, art. 3 [hereinafter Regulations on Registration].

69. See Constitution, art. 152.

70. See North Korea, *The Judiciary* (visited April 23, 1998) <[http://lcweb2.loc.gov/cgi-bin/query/r?frd/cs:@field\(docid-k0102\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cs:@field(docid-k0102))>.

71. See Constitution, *supra* note 24, art. 155.

72. See *id.* art. 159.

73. See *id.* art. 160.



#### D. Arbitration

Because so little is known about the court system in the DPRK, alternative dispute resolution options become essential considerations for all potential foreign investors. Many of the laws and regulations dealing with the various aspects of foreign trade allude to the option of arbitration within the DPRK as an alternative to the court system of the DPRK.<sup>74</sup> None of these laws or regulations, however, provide any insight into how the arbitration system within the DPRK actually functions. Also, there is no mention of an arbitration system or agency in the Constitution, and so, even less is known about arbitration in the DPRK than the court system.

Therefore, access to international arbitral bodies may be the only safe option for foreigners in North Korea, but even this option holds a few uncertainties. The largest problem with this alternative is that not all of the relevant foreign investment laws and regulations provide the option of taking a claim to international arbitration. Within the collection of laws and regulations dealing with foreign investments, only the Foreign Investment Law,<sup>75</sup> the Laws on Equity Joint Ventures<sup>76</sup> ("EJV"), the Law on External Economic Contract,<sup>77</sup> the Regulations on Processing Trade in the FETZ,<sup>78</sup> the Regulations on Contract Construction in the FETZ,<sup>79</sup> and the Regulations on Tourism in the FETZ<sup>80</sup> mention international arbitration as an option for dispute resolution. Thus, it is an open question whether claims arising from the rest of the laws and regulations that do not state third party arbitration as an option, including those governing CJVs, wholly foreign-owned enterprises, labor issues, and tax issues, may only be heard in DPRK courts and arbitration agencies.

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74. See, e.g., Law of the Democratic People's Republic of Korea on Foreign Investment, art. 22 [hereinafter Foreign Investment Law]; Foreign Enterprises Law, art. 31; Law of the Democratic People's Republic of Korea on Contractual Joint Venture, art. 21 [hereinafter CJV Law]; Law of the Democratic People's Republic of Korea on Equity Joint Venture, art. 47 [hereinafter EJV Law].

75. See Foreign Investment Law, *supra* note 74, art. 22.

76. See EJV Law, *supra* note 74, art. 47.

77. See External Economic Contract Law, *supra* note 52, art. 42.

78. See Regulations on Processing Trade in the Free Economic and Trade Zone, art. 43 [hereinafter Regulations on Processing Trade].

79. See Regulations on Contract Construction in the Free Economic and Trade Zone, art. 63.

80. See Regulations on Tourism in the Free Economic and Trade Zone, art. 35.

Another major concern with third party arbitration is the uncertainty over whether the DPRK will even honor a ruling by a tribunal outside of the DPRK. Officials have given assurances that North Korea will indeed honor all decisions properly heard and decided by third parties as a policy matter.<sup>81</sup> Laws and regulations providing for international arbitration as an alternative to the North Korean courts and arbitration system lends support to these reassurances. But, the DPRK has not officially signed on to the New York Convention<sup>82</sup> or any other international conventions recognizing and enforcing arbitral awards, so this concern is not fully dissipated.<sup>83</sup>

### E. *Worker's Party*

Running parallel to the entire structure of the formal government is the Worker's Party. In the only passage mentioning the Worker's Party, Article 11 of the Constitution states that the DPRK "shall conduct all activities under the leadership of the Worker's Party of Korea." This Constitutional provision underscores the need for further information concerning both the formal and informal role of the Worker's Party in legal and policy matters, including those related to foreign investment.

## II. *DPRK JURISPRUDENCE*

### A. *Presidential Edicts*

The President, under the provisions of the Constitution, has the power to issue edicts that carry is another point of contention. One source indicates that edicts made by the President supersede all other legislation (whether this would include the Constitution is unclear).<sup>84</sup> Contrary to this report, officials in North Korea have stated that edicts issued by the President supersede neither the Constitution nor legislative acts.<sup>85</sup> Under the Constitution, the President is held accountable to the SPA.<sup>86</sup>

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81. See Meetings, *supra* note 54.

82. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 21 U.S.T. 2517 (June 10, 1958).

83. Officials have suggested that they are willing to look into the possibility of signing onto an international convention recognizing arbitral awards. See *id.*

84. See North Korea, *The Executive Branch: The President and Vice Presidents* (visited April 23, 1998) <[http://lcweb2.loc.gov/cgi-bin/query/r?frd/cs:@field\(docid-k0105\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cs:@field(docid-k0105))>.

85. See Meetings, *supra* note 54.

86. See Constitution, art. *supra* note 24, 109.

So, in theory, a presidential edict should not supersede enacted legislation. But the relationship among the Constitution, legislation and legislative acts of a body other than the SPA, and Presidential edicts remains unclear. Additionally, the questions of whether presidential edicts can trump administrative acts, provisions of bilateral treaties, or judgments of North Korean courts need further exploration.

*B. Edicts by the Central People's Committee*

In carrying out its executive functions, the CPC is also empowered to issue decrees, decisions, and directives.<sup>87</sup> The CPC is explicitly held accountable to the SPA for its acts,<sup>88</sup> so it does not seem likely that any of its decrees would supersede legislation enacted by the SPA. Similar to the status of presidential edicts, however, the relationship between decrees issued by the CPC and non-SPA legislation, acts of other governmental bodies, and court decisions remains unclear.

*C. Legislation Enacted by the Supreme People's Assembly*

As the main legislative body of the DPRK, the SPA has the power to enact legislation when more than half of the deputies attending the session vote to approve the law.<sup>89</sup> The SPA can also amend the Constitution if more than two thirds of the total number deputies vote to approve the amendment.<sup>90</sup> Because all other branches and offices of government are ultimately held accountable to the SPA, acts by the SPA most likely supersede all other governmental acts and decrees. Whether a DPRK court could declare SPA legislation unconstitutional, however, is not clear.

*D. Administrative Law*

Many laws and regulations that involve administrative bodies provide procedures for appealing acts and decisions made by these administrative bodies.<sup>91</sup> In most cases, the laws and regula-

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87. *See id.* art. 121.

88. *See id.* art. 123.

89. *See id.* art. 97.

90. *See id.*

91. *See, e.g.,* Law of the Democratic People's Republic of Korea on Foreign Investment-Business Enterprise and Individual Tax, art. 56 [hereinafter Foreign Investment-Business Enterprise and Individual Tax Law]; Labour Regulations, art. 47; Customs Law

tions allow the aggrieved party to petition the office immediately superior to the department or official that made the original determination.<sup>92</sup> The superior office, in turn, will promptly issue a decision within a certain time period (usually 30 days).<sup>93</sup> If the party is not satisfied with this decision, then party has a time limit (usually 10 days) in which to file a lawsuit with the appropriate court or arbitral body.<sup>94</sup>

### E. *International Law*

The status of international law within North Korean jurisprudence is uncertain. First, while all sources indicate that the DPRK holds that international agreements to which it is a party constitute a source of international law, the attitude of the DPRK toward customary international law is unclear. Officials have stated that the DPRK respects customary international law and views international law as binding between states.<sup>95</sup> However, other sources indicate that the DPRK rejects the concept of customary international law. Second, the conditions under which the DPRK gives effect in its domestic legal system to international law is not free from doubt. Specifically, it is not clear whether specific legislation is required for international law, whether conventional or customary, to be recognized as valid within the DPRK. For example, the tax laws relating to foreign-invested enterprises provide that tax treaties between the DPRK and another government take precedence over a contrary statute.<sup>96</sup> Does this provision of DPRK indicate that, in the absence of such a provision, tax treaties would not be considered DPRK law or does it simply evaluate DPRK law with respect to treaties, namely, that they supercede inconsistent legislation?

## III. *REGULATION OF FOREIGN INVESTMENT*

### A. *Permitted Forms of Foreign Investment*

The laws and regulations pertaining to foreign investment

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of the Democratic People's Republic of Korea, art. 50 [hereinafter Customs Law]; Regulations on Advertisement, art. 19.

92. See, e.g., Foreign Enterprise and Individual Tax Law, *supra* note 91, art. 56.

93. See *id.* art. 57.

94. See *id.*

95. See Meetings, *supra* note 54.

96. See Foreign Investment-Business Enterprise and Individual Tax Law, *supra* note 91, art. 7.

in the DPRK recognize four forms in which a foreigner may invest in the DPRK. Three forms include the principal characteristics of contractual joint ventures, equity joint ventures, and wholly-owned foreign enterprises.<sup>97</sup> In addition to these forms of investment, foreigners may simply contract with DPRK firms for the processing of raw materials or the assembly of components into a finished good.

### 1. Representative Office

According to the Regulations on Resident Representative Offices of Foreign Business in the Free Economic and Trade Zone ("Regulations on Representative Offices"), foreign enterprises are allowed to open representative offices in the FETZ.<sup>98</sup> Representative offices outside of the FETZ are not addressed in any laws or regulations. Consequently, whether representative offices are permitted outside the FETZ is an open question.

Regulations require a foreign business to obtain approval from the EEA before opening a representative office in the FETZ.<sup>99</sup> All representative offices must file an application detailing the business of the foreign enterprise, as well as a financial statement of the recent period, a profit-and-loss account, and the memorandum and list of the members of the board of directors of the parent enterprise.<sup>100</sup>

In addition to the application, the regulations impose other specific requirements for representative offices. First, the regulations specify that the maximum term of residence for offices is three years and that the number of representative officers cannot exceed five.<sup>101</sup> Offices that desire to stay in the zone any longer than three years are required to submit a renewal application to the original screening body three months before the term of residence expires.<sup>102</sup> Also, the regulations specifically forbid representative offices from certain activities such as importing goods from foreign countries for the purpose of third-country trade or consignment sale and exporting goods ob-

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97. See Exhibit B for a chart reflecting these three forms of foreign investment in the DPRK.

98. See Representatives Offices Law, art. 3.

99. See *id.* art. 10.

100. See *id.*

101. See *id.* art. 4.

102. See *id.* art. 22.

tained in the DPRK that are not authorized to the parent business.<sup>103</sup> Service-related activities, on the other hand, such as liaison, consultation and dissemination of economic and technical information related to the transactions of the parent business, entering into contracts with clients, and making payments and deliveries of goods, are suggested as proper activities in which representative offices may engage.<sup>104</sup> Finally, the regulations require representative offices to submit an annual report to the screening body every January.<sup>105</sup>

## 2. Wholly Foreign-Owned Enterprise

Enterprises that are wholly-owned by foreign investors are allowed in the DPRK, but only in the FETZ.<sup>106</sup> All wholly-foreign owned enterprises are required to submit an application to the Zone Authority before conducting business in the DPRK.<sup>107</sup> Along with an application for operation, an investor is required to submit a memorandum of articles of association, a feasibility study report, documents of the investor, a list of equipment and materials to be contributed, manuals on industrial property rights and technical know-how to be supplied, certificates on the financial position of the investor, and other necessary documents.<sup>108</sup>

Depending on the amount of investment in the enterprise, either the EEA or the Zone Authority will consult the relevant administrative agencies and screen the application materials for approval.<sup>109</sup> The screening body is required to give notice of approval or rejection of the project within ninety days from the receipt of the application.<sup>110</sup>

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103. *See id.* art. 6.

104. *See id.* art. 5.

105. *See id.* art. 21.

106. *See* Regulations for the Implementation of the D.P.R.K. on Wholly Foreign-owned Enterprises, art. 2 [hereinafter Regulations for WFOE]; Meetings, *supra* note 54.

107. *See* Regulations for WFOE, *supra* note 106, art. 12.

108. *See id.*

109. Infrastructure projects over 10 million Won and other projects over 20 million Won are screened by the EEA. All other wholly foreign-owned projects under these amounts are screened by the Zone Authority. *See id.* art. 18.

110. *See id.* art. 20.

### 3. Forming Contractual Joint Ventures and Equity Joint Ventures

Both CJVs and EJVs involve joint efforts between foreign and North Korean parties. Foreign investors searching for a North Korean counterpart must first decide whether they will invest inside or outside of the FETZ.<sup>111</sup> Depending on the desired location of the enterprise, foreign investors will then go to either the CPEEC or the Joint Venture Group which will help them find a partner.<sup>112</sup>

Foreign investors may contract with state-owned and collectively-owned enterprises to form a joint venture.<sup>113</sup> Separate state organs such as various ministries and commissions receive funds from the central government with which to establish enterprises.<sup>114</sup> Foreign investors can form joint ventures with state-owned enterprises, which are separate legal entities operated by the state organs.<sup>115</sup> Each organ draws funds separately from the central government, and each is permitted to operate independently to produce a profit through the ventures.<sup>116</sup> Collectively-owned enterprises are entities owned by individuals in the DPRK. Most collectively-owned enterprises are found in agricultural areas.<sup>117</sup> Questions such as the power of a state-owned enterprise or collectively-owned enterprise to contract, incur debt, and dispose of assets without ministerial approval remain to be explored.

The actual process by which a partner is formed remains unclear, particularly whether a foreign investor has the right to select among several candidates or whether the partner is selected by the state. Once found, however, the parties will meet in informal consultations along with the EEA and submit a feasibility report to the screening body.<sup>118</sup> Then the parties will conclude a contract and submit it, along with all of the other necessary documents, to the screening body for final approval of the venture.

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111. See Meetings, *supra* note 54.

112. See *id.*

113. See *id.*

114. See *id.*

115. See *id.*

116. See *id.*

117. See *id.*

118. See *id.*

#### 4. Contractual Joint Venture

The DPRK prefers CJVs for basic manufacturing, tourism, and service sectors.<sup>119</sup> A CJV is an agreement between a foreign investor and a DPRK partner where the DPRK partner is expected to take responsibility for production and management while the foreigner furnishes the advanced machinery and technical processes and finds markets to sell the finished products.<sup>120</sup> For a CJV to be approved, the regulations require that a CJV either 1) uses advanced technology, 2) updates its equipment to improve the quality of products to the international standard, 3) produces internationally-competitive export goods, economizes fuel, raw materials, materials, and power, or 4) makes an effective use of the already existing production capacity.<sup>121</sup>

One key distinction between a CJV and an EJV is that the liability of loss in a CJV is placed on the partner that does not fulfill its responsibilities.<sup>122</sup> But, a similar feature between CJV and an EJV is that both may be established anywhere in the DPRK where a local partner can be found.

CJV investors are expected to draft a joint venture contract and the necessary documents for submission to the relevant screening body.<sup>123</sup> CJV parties are required to submit with its application a joint venture contract, a memorandum of association, a feasibility study report, and credit information issued by the bank with which the parties to the joint venture keep accounts.<sup>124</sup> Upon receipt of the application, the relevant screening body<sup>125</sup> will consult the planning body, the financial body, the science and technology administration body, the construction supervision body, the land administration body, and the environmental protection body.<sup>126</sup> The screening body will respond with a decision within fifty days.<sup>127</sup>

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119. See CJV Law, *supra* note 74, art. 3.

120. See *id.* arts. 2, 4.

121. See Implementing Regulations for the Law on Contractual Joint Venture, art. 16 [hereinafter Regulations on CJV].

122. See CJV Law, *supra* note 74, art. 19.

123. See Regulations on CJV, *supra* note 121, art. 17.

124. See *id.* art. 22.

125. The screening process is divided in the same manner as the wholly foreign-owned enterprises. See *id.* art. 21; *supra* note 92.

126. See Regulations on CJV, *supra* note 121, art. 24.

127. See *id.* art. 26.



## 5. Equity Joint Venture

The DPRK prefers EJVs for high-tech and infrastructure projects.<sup>128</sup> Parties to an EJV will jointly contribute the investment and materials necessary for the venture, and a ninety percent foreign majority ownership and control is allowed. EJVs are juridical persons under the law, taking the form of limited liability companies with each party's liability limited to the amount of its subscription.<sup>129</sup> And, as noted above, EJVs are allowed to operate anywhere in the DPRK. EJVs have several advantages over the CJVs because of limited liability and the availability of international arbitration.<sup>130</sup>

Upon drafting a contract between the parties, EJV parties must provide the same documentation as CJV parties and the relevant screening bodies will run through the same steps of review as the CJV review process.<sup>131</sup>

### B. *Scope of Permitted Investments*

#### 1. Prohibited Investments

It is not surprising that the State has made certain sectors such as publishing, press, telecommunications, and broadcasting off-limits to foreign investment.<sup>132</sup> Additionally, Article 11 of the Foreign Investment Law reserves a broad right of the State to prohibit or restrict projects that hinder the development of the national economy and threaten national security, or that are technically obsolete and harmful to the environment. This language has been adopted, with some modifications, in each of the regulations concerning foreign-invested enterprises.<sup>133</sup> It remains unclear as to how the relevant authorities could interpret this potentially broad prohibition.

#### 2. Permitted Investments

Generally, Article 6 of the Foreign Investment Law allows

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128. See EJV Law, *supra* note 74, art. 3.

129. See *id.* art. 4.

130. See *id.* art. 47; *supra* note 60.

131. See Implementing Regulations for the Law on Equity Joint Venture, arts. 13-23 [hereinafter Regulations on EJV].

132. See Regulations for WFOE, *supra* note 106, art. 10; Meetings, *supra* note 54 (indicating that these sectors are off-limits to EJVs and CJVs as well).

133. See Regulations for WFOE, *supra* note 106, art. 9; Regulations on EJV, *supra* note 74, arts. 11-12; Regulations on CJV, art. 7.

foreign interests to invest in sectors such as industry, agriculture, construction, transport, telecommunications, science and technology, tourism, commerce, and financial sectors. The regulations dealing with the three major forms of foreign investments have essentially adopted this general list of permitted investments, further detailing the specific areas of investment permitted for each venture.<sup>134</sup> Also, officials have indicated that these lists of permitted investments are not exhaustive and that any activity not explicitly prohibited or permitted under the laws and regulations would be open for negotiation between the potential investors and the State.<sup>135</sup>

### 3. Encouraged Investments

Article 7 of the Foreign Investment Law particularly encourages investments in sectors requiring high and modern technology, sectors that produce internationally competitive goods, sectors in natural resource development and infrastructure construction, and sectors in scientific research and technology development.<sup>136</sup> Mining falls within the scope of Article 7 under the "natural resource development" category.<sup>137</sup> The State encourages these particular investment sectors by providing reductions and exemptions from income and other taxes, favorable conditions for land use, and the preferential supply of bank loans.<sup>138</sup>

## C. *Conditions Upon Establishment*

### 1. Regulatory

Because the intent of the new laws is to encourage foreign investment in the DPRK, the laws do not place many impediments in the way of establishing an enterprise in the DPRK. The laws and regulations do not impose requirements in areas such as the types of technology contributed, the amount of capital that a foreign party must contribute to an enterprise, or the number of jobs that an enterprise must create for the DPRK.

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134. See Regulations for WFOE, *supra* note 106, art. 7; Regulations on EJV, *supra* note 74, art. 8; Regulations on CJV, art. 4.

135. See Meetings, *supra* note 54.

136. See also Regulations on EJV, *supra* note 74, art. 9; Regulations on CJV, *supra* note 106, art. 5.

137. See Meetings, *supra* note 54.

138. See Foreign Investment Law, *supra* note 74, art. 8.

But, concerning wholly foreign-owned enterprises, EJVs, and CJVs, the regulations do reserve a general right of the State to require that enterprises be equipped with hi-tech and modern technologies and production facilities, be able to produce internationally competitive goods, or be able to raise the quality of its products up to international standards.<sup>139</sup>

One requirement that is imposed both on EJVs and on wholly foreign-owned enterprises is a minimum ratio of registered capital to the total investment. Although no minimum amount of capital is required, these enterprises must maintain a minimum percentage of registered capital to the total investment.<sup>140</sup>

Additionally, the regulations allow contributions from investors to be made in the form of cash, property in kind, technical know-how, industrial property, and the like.<sup>141</sup> But, only twenty percent of the investment may be made in the form of industrial property rights, copyrights, or technical know-how.<sup>142</sup>

## 2. Taxes and Fees

The laws and regulations do not require any special taxes or fees for approval of an enterprise.

### D. *Controls on the Operation of Foreign Investment*

#### 1. Performance Requirements

No specific section regulates such factors as the minimum amount of earnings required from an enterprise, the number of jobs created by a project, or the amount of investments required as conditions for continuing operation of permitted investments.

#### 2. Controls on Capital

The DPRK imposes its controls on capital mainly through its

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139. See Regulations for WFOE, *supra* note 106, art. 8; see also Regulations on EJV, *supra* note 74, art. 12; Regulations on CJV, *supra* note 123, art. 7.

140. Both the Regulations on EJV and the Regulations for WFOE require a scaled percentage of the total investment to be registered capital (depending on the amount of the total investment). See Regulations for WFOE, *supra* note 106, art. 26; Regulations on EJV, *supra* note 74, art. 46.

141. See Regulations for WFOE, *supra* note 106, art. 28; Regulations on EJV, *supra* note 74, art. 31; Regulations on CJV, art. 37.

142. See Regulations for WFOE, *supra* note 106, art. 29; Regulations on EJV, *supra* note 74, art. 39. However, the Regulations on CJV do not impose this requirement.

laws and regulations concerning foreign exchange control. The Law on Foreign Exchange Control specifically forbids the circulation of foreign currency within the territory of the DPRK, holding that foreign currency must be converted into Korean Won if it is to be used.<sup>143</sup> Exchange transactions may only be done by the Foreign Trade Bank or another bank authorized by the State to engage in foreign exchange transactions.<sup>144</sup> The exchange rate for the Korean Won is determined by the Foreign Exchange Administration Organization<sup>145</sup> ("FEAO"), which also has the authority to supervise the use of foreign exchange in the DPRK.<sup>146</sup>

Regarding the import of foreign currencies, the State allows an unlimited amount of foreign currencies, securities denominated in foreign currency, and precious metals to be brought in to the DPRK. The DPRK does, on the other hand, place some restrictions on the export of foreign currencies. Foreign currencies and precious metals may not be taken out of the country in amounts exceeding the amounts declared to the Customs Office when first brought into the country.<sup>147</sup> The laws carve out an exception to this rule for those individuals and enterprises operating within the FETZ by allowing foreign currencies or securities to be removed without reference to the related documents or customs declarations.<sup>148</sup>

Concerning the remittance of profits earned within the DPRK, the laws allow a foreign investor to remit abroad limitless profits earned in the investor's business activities.<sup>149</sup> A foreign individual working for a foreign-invested enterprise, however, may only remit up to sixty percent of the total salary earnings.

### 3. Price Controls

Because businesses within the DPRK are required to sell to the government, which then distributes the products to the people, and because foreign enterprises are required to purchase raw materials it purchases in the country from the government,

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143. *See* Law of the Democratic People's Republic Korea on Foreign Exchange Control, art. 6 [hereinafter Foreign Exchange Control Law].

144. *See id.* art. 5.

145. *See id.* art. 7.

146. *See id.* art. 21.

147. *See id.* arts. 23, 26.

148. *See id.* art. 25.

149. *See id.* art. 27.

businesses have no choice but to negotiate with one party to determine domestic price.<sup>150</sup> In these cases, it is not stated whether the domestic price is set by the international market rate or by the negotiations between the parties and the DPRK. Outside of these indirect controls on pricing, the laws and regulations do not attempt to control how enterprises set their prices and, presumably, judgments as to pricing of both imports and exports would be left to the enterprise.

#### 4. Controls on Competition

Officials have affirmatively indicated that the State would be willing to negotiate with parties in granting a monopoly or an oligopoly as part of the establishment agreement of the enterprise.<sup>151</sup> These agreements are concluded on a case-by-case basis, along with most of the other conditions for establishing a venture.<sup>152</sup> No law or regulation officially allows or prohibits the granting of monopolies and oligopolies.

#### 5. Controls on Employment Practices

Not surprisingly, laws regulating labor and employment are restrictive. The Labour Regulations for Foreign Invested Businesses (the "Labour Regulations") require all enterprises to hire North Korean workers, with an exception that management and unavailable skilled positions may be staffed by foreigners with the approval of the EEA.<sup>153</sup> And because the labor unions and the labor service agencies act as extensions of the State, the DPRK exercises considerable control in this area of the business.

Extensive guidelines are imposed on the procedure for dismissing a worker. First, a business must obtain the consent of the labor union and the labor service agency before it is able to dismiss an employee. In addition, the Labour Regulations lists the exclusive reasons why an employer may dismiss an employee: 1) the worker is incapacitated from a non-work related cause, 2) the amount of workers must be reduced due to changes in the technical or production condition, 3) the enterprise is filing for bankruptcy or is winding up its business, or 4) an employee in-

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150. See Foreign Enterprises Law, art. 17.

151. See Meetings, *supra* note 54.

152. See *id.*

153. See Labour Regulations, art. 4.

flicts great loss to the employer or seriously violates labor discipline.<sup>154</sup>

The Labour Regulations limit work weeks to six days and eight hours per day.<sup>155</sup> Overtime is restricted, but an enterprise may require overtime with the consent of the labor union.<sup>156</sup> The regulations set the rate of monthly wages at a minimum of 160 Won in the FETZ and 220 Won elsewhere.<sup>157</sup> Finally, the Labour Regulations require that all employers provide safe and hygienic work conditions, social security and social insurance, safety and technical training, child care centers, and nutritious meals for all their employees.<sup>158</sup>

## 6. Land Use

Under the Constitution, the State owns all natural resources of the country, including real property.<sup>159</sup> Foreign enterprises in the DPRK are allowed to lease land from the land administration office or the Zone Authority in the FETZ (the "lessor authority").<sup>160</sup> The leasing of land is conducted through consultation with the appropriate lessor authority (in the FETZ, tender and auction of land may also be conducted to lease the land).<sup>161</sup> The leases have a maximum term of fifty years which may be extended through an application to the lessor authority.<sup>162</sup> The lessee of land may transfer the right to use the land or mortgage the leased land subject to the approval of the relevant lessor authority.<sup>163</sup>

For mining, leasing laws are explicit in limiting the land leases to the surface rights only.<sup>164</sup> The available collection of laws and regulations do not provide any specific guidance for foreign investors wishing to obtain mining rights.

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154. *See id.* art. 15.

155. *See id.* art. 23.

156. *See id.* art. 24.

157. *See id.* art. 26.

158. *See id.* arts. 34-37.

159. *See* Constitution, *supra* note 24, art. 21.

160. *See* Law of the Democratic People's Republic of Korea on the Leasing of Land, art. 4 [hereinafter Land Leasing Law].

161. *See id.* art. 9.

162. *See id.* arts. 6, 36.

163. *See id.* arts. 18, 23.

164. *See id.* art. 3.

## 7. Importation and Exportation of Goods

Concerning the importation and exportation of goods, the DPRK has a stated policy of applying a zero or low tariff on materials whose import and export are encouraged and high tariff on materials that are discouraged.<sup>165</sup> Encouraged items, such as raw materials brought in for production and domestic sale, materials processed and exported by a foreign enterprises, and materials for the purpose of assembly trade, entrepot trade and re-export, are all exempt from customs duty.<sup>166</sup> Additionally, other items may be exempt from tariffs under a treaty with a foreign country, or a special decree from the State.<sup>167</sup> Although tariff amounts are not specified in these statutes, discouraged materials such as items produced and sold within the DPRK by foreign enterprises, or items imported for sale in the DPRK,<sup>168</sup> will most likely face high tariff barriers pursuant to the general policy stated above.

## 8. Importation and Protection of Intellectual Property

Various regulations governing foreign enterprises place the responsibility to screen the in-flow of technology on the Science and Technology Inspection Body ("STIB").<sup>169</sup> The STIB is responsible for reviewing the mandatory applications for import and export of technology.<sup>170</sup> Regulations specify that industrial property rights, copyrights, and technical know-how may not be contributed unless they meet one or more of the following requirements: 1) production of new products or export items, 2) improvement of quality and productivity of the products, 3) sizeable economy or raw materials, labor and energy, or utilization to the full of natural resources, 4) relation to production processes and safe and harmless to health, or 5) improvement of economic arrangement and management.<sup>171</sup>

Although it has been noted that the STIB is responsible for

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165. See Customs Law, art. 4.

166. See *id.* art. 34.

167. See *id.*

168. See Customs Regulations for Free Economic and Trade Zone, art. 40 [hereinafter Customs Regulations].

169. See, e.g., Regulations on CJV, *supra* note 123, art. 72.

170. See *id.* art. 66.

171. See Regulations on EJ, *supra* note 74, art. 36; see also Regulations on CJV, *supra* note 123, art. 40.

supervising the flow of technology in the DPRK, the laws and regulations do not explain the procedural practices of the STIB.

Matters such as the granting of patents, trademarks, and copyrights and the protection of intangibles and trade secrets are not addressed in the collection of laws and regulations provided to date, although such matters may be addressed in other statutes.

### 9. Immigration

Immigration in and out of the FETZ is governed by the Regulations on Immigration Procedure in the FETZ ("Regulations on Immigration"). No rules devoted to immigration into other parts of the DPRK are available. In general, traffic into parts other than the FETZ is closely controlled and monitored while rules for travel directly in and out of the FETZ seem to be more relaxed. Thus, if a foreigner is traveling anywhere outside of the FETZ in the DPRK, he or she must carry an appropriate visa issued by the diplomatic or consular missions of the DPRK in foreign countries.<sup>172</sup> Traffic to and from the FETZ is confined to routes designated by the State.<sup>173</sup> If a foreigner is traveling directly in and out of the FETZ from foreign countries, however, various exceptions such as invitations from bodies in the zone,<sup>174</sup> tourist passes issued by the DPRK,<sup>175</sup> diplomatic passes,<sup>176</sup> and frequent visitor passes<sup>177</sup> allow a foreigner to travel into the DPRK without a visa. Additionally, no visa is required for those wanting to leave the FETZ to another country.<sup>178</sup>

### 10. Taxes and Fees

As regards income taxes, foreign enterprises operating outside the FETZ are taxed at twenty-five percent of taxable incomes.<sup>179</sup> Enterprises operating within the FETZ are taxed at a rate of fourteen percent of the taxable income and ventures op-

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172. See Regulations on Immigration Procedure in the Free Economic and Trade Zone, art. 7 [hereinafter Immigration Regulations].

173. See *id.* art. 5.

174. See *id.* art. 6.

175. See *id.* art. 10.

176. See *id.* art. 11.

177. See *id.* art. 9.

178. See *id.* art. 12.

179. See Foreign Investment-Business Enterprise and Individual Tax Law, *supra* note 91, art. 12.



erating in preferential sectors are taxed at a rate of ten percent of taxable income.<sup>180</sup> Foreign-invested enterprises are required to file a tax return once every quarter in addition to an annual tax return.<sup>181</sup>

Under the Tax Law, earnings derived from business activities in the DPRK, as well as other incomes earned in the DPRK (including interest, income from dividends, proceeds from the lease or sale of fixed assets, proceeds from the transfer of assets, royalties on industrial properties, and know-how and management fees), are all included as part of income.<sup>182</sup> Income tax for enterprises is calculated by subtracting from income the costs of materials, fuel and power, labor, depreciation, goods purchased, workshop and corporation management cost, premium for insurance and sales, and other expenses for the annual period of January 1 to December 31 and, then, applying the prescribed tax rate.<sup>183</sup>

#### c. Extraction Fees and Royalties

Article 47 of the Tax Law states that foreign enterprises must pay a registration and license tax to the local governments for royalties on mining but does not elaborate further on the nature or amounts of these taxes.

#### d. Property Taxes

Property taxes are assessed on all buildings, vessels, and aircraft in the DPRK.<sup>184</sup> Buildings located in the FETZ are exempt from the payment of property tax for the first five years.<sup>185</sup> The tax base for property is the same as the registered value of the property<sup>186</sup> and is paid on a quarterly basis.<sup>187</sup>

#### e. Sales Taxes

Foreign enterprises conducting the sale of goods or services

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180. *See id.*

181. *See id.* art. 10.

182. *See id.* art. 8.

183. *See id.* art. 9.

184. *See id.* art. 25. The rate of property tax is as follows: 1% of registered value for buildings and 1.4% of registered value for ships and aircraft. *See id.* at Table 3.

185. *See id.* art. 25.

186. *See id.* art. 27.

187. *See id.* art. 30.

are subject to a monthly turnover tax.<sup>188</sup> The base for turnover tax is measured by the total revenues from sales or services<sup>189</sup> and foreign enterprises are taxed according to the rate set for the particular industry.<sup>190</sup> Export goods, on the other hand, are not subject to turnover tax.

#### f. Provincial and Local Taxes

Finally, in addition to the other taxes, foreign enterprises are subject to local taxes. Local taxes include the city management tax, registration and license tax, and vehicle tax.<sup>191</sup> The monthly city management tax is one percent of the total wages paid by the foreign enterprise.<sup>192</sup> Also, foreign individuals residing in the DPRK for more than six months must also pay one percent of his or her revenue to the local government on a monthly basis.<sup>193</sup>

### E. *Incentives and Guarantees*

#### 1. Freedom From Expropriation

Many questions concerning the concepts of ownership in the DPRK still remain unresolved. One major concern is whether ownership by corporate entities will be respected by the State. The Constitution differentiates between state, private, and collective ownership.<sup>194</sup> The Constitution further specifies that all means of production in the DPRK are owned by the State.<sup>195</sup> These notions seem to conflict with the idea of foreign-invested business ownership of the means of production. Although Article 19 of the Law on Foreign Investment contains a guarantee against nationalization or seizure of foreign investments and officials have reiterated that the property of foreign enterprises will be respected,<sup>196</sup> there is nothing linking these guarantees to the Constitution. And, presumably, in a conflict of laws or policy,

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188. *See id.* art. 37.

189. *See id.* art. 38.

190. *See id.* at Table 5. Turnover tax in service sectors in the FETZ is reduced by 50%. *See id.* art. 42.

191. *See id.* art. 43.

192. *See id.* art. 46.

193. *See* Tax Regulations, *supra* note 91, art 67.

194. *See* Constitution, *supra* note 24, arts. 20-24.

195. *See id.* art. 20.

196. *See* Meetings, *supra* note 54.

the Constitution would supersede all other legislation. Thus, more clarification is needed in this area.

Article 19 of the Law on Foreign Investment reserves the right of the State to seize or nationalize foreign investments in "unavoidable circumstances" and assures that the State will pay "fair compensation" to the foreign parties for their loss. Because the laws do not define "unavoidable" or "unfair," it must be assumed that the State retains the discretion to make these determinations. This potentially broad power may be a source of concern for foreigners investing not only capital and materials, but also trade secrets and protected technology. Officials have indicated, however, that the State would be willing to define more closely these terms in individual contracts.<sup>197</sup>

## 2. Taxes and Fees

### a. Priority Sector Enterprises

As noted above, certain preferred industries are given greater tax incentives than others. Thus, enterprises in high technology, natural-resource development, infrastructure development, construction, research, and development are taxed at a flat rate of ten percent of total income.<sup>198</sup> In particular, the DPRK seems to be interested in encouraging infrastructure development by foreign investors, and has given a special tax advantage for investing in this sector. A foreign investment enterprise that invests more than sixty million Won in infrastructure projects is exempted from tax for four years from the first profit making year and, thereafter, the tax is reduced by up to fifty percent for the following three years.<sup>199</sup>

### b. FETZ Enterprises

In its efforts to direct much of the foreign investment to the FETZ, the DPRK has placed a variety of tax advantages for establishing an enterprise in the FETZ. As noted above, all businesses located in the FETZ are taxed at a flat rate of fourteen percent as opposed to the twenty-five percent rate that is imposed elsewhere.<sup>200</sup> Additionally, for priority sector enterprises that re-

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197. *See id.*

198. *See* Tax Law, *supra* note 91, art. 12.

199. *See id.* art. 15.

200. *See id.* art. 12.

main in the FETZ for more than ten years, taxes are waived for three years from the first profit-making year and, thereafter, the tax is reduced up to fifty percent for two more years.<sup>201</sup> Service sector enterprises that operate in the FETZ for at least ten years will be exempt from tax for one year after the first profit-making year and, thereafter, get a tax reduction by up to fifty percent for the following two years.<sup>202</sup> Finally, the Law on FETZ exempts customs duties on goods for the various needs of the enterprise.<sup>203</sup>

### c. Reinvestment

Tax incentives encourage reinvestment in the DPRK. Enterprises that reinvest profits to increase registered capital in the DPRK or to create another foreign enterprise that stays in the DPRK for more than five years, can deduct one hundred percent of that amount from their taxes if they are in infrastructure sector enterprises, or fifty percent in all other sectors.<sup>204</sup>

### d. Tax Treaties

Article 12 of the Tax Regulations provides that agreements between the DPRK and other countries on the issue of taxes will take precedence over any conflicting tax laws or regulations. It is not clear, however, whether the DPRK has a tax treaty with another country, and it is uncertain what the policy of the State is on negotiating tax treaties.

## 3. Reduced Land Rental

Normally, the user of leased land is expected to pay an annual land-use charge fixed by the State.<sup>205</sup> But, the regulations provide another incentive by holding that the Lessor Authority has discretion to grant a reduction of, or exemption from, the land use charge for up to ten years for investments in the priority area or in the FETZ, depending upon the scale, contents, and economic effectiveness of the investment.<sup>206</sup> Because the regula-

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201. *See id.* art. 15.

202. *See id.*

203. *See* FETZ Law, art. 12.

204. *See* Tax Regulations, *supra* note 91, art. 35.

205. *See* Land Leasing Law, *supra* note 160, art. 33.

206. *See* Implementing Regulations for the Law of the D.P.R.K. on the Leasing of Land, art. 95 [hereinafter Regulations on Land Leasing].

tions do not provide any additional explanations for this benefit, it is presumably another matter that a party may negotiate with the appropriate authority.

*G. Dissolution of Investment: Regulations, Taxes, and Fees*

Through its regulatory schemes, the DPRK has established a generally standardized procedure for dissolving different forms of foreign investments. In the event that continuing to operate an enterprise is no longer feasible, the regulations require that the enterprise submit an application to the screening body for approval of the dissolution.<sup>207</sup> If the application is approved, a liquidation committee, consisting of a representative of the enterprise, a representative of the creditors, a certified public accountant, and a representative of the screening body will go about the business of liquidating the enterprise.<sup>208</sup> The liquidation committee is responsible for informing all creditors and debtors of the dissolution and settling all accounts of the enterprise.<sup>209</sup> Upon completing the liquidation, the committee surrenders the certificate of business registration, the business license, the certificate of tax registration to the relevant bodies, and cancels the company's accounts.<sup>210</sup> Finally, when all is done, the registrar of business makes public the dissolution of the company.<sup>211</sup> The regulations do not, however, indicate that there are any taxes or fees to be paid upon the dissolution of the foreign investment.

IV. INVESTMENT IN NATURAL RESOURCES

Aside from the standard requirement that all foreign-invested enterprises obtain approval from either the EEA or the Zone Authority, there is no designation in the laws and regulations of any specific authority to supervise the area of natural resource extraction. A provision exists in the regulations for both EJVs and CJVs, however, that may concern potential for-

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207. See, e.g., Regulations on EJV, *supra* note 74, art. 136. The regulations concerning CJVs and WFOEs provide parallel procedures for dissolution. See Regulations on CJV, arts. 112-25; Regulations for WFOE, *supra* note 106, arts. 66-74. This outline will use the EJV to as an illustration of the procedure for dissolution.

208. See Regulations on EJV, *supra* note 74, art. 140.

209. See *id.* arts. 142-48.

210. See *id.* art. 149.

211. See *id.* art. 151.

eign investors in the mining industry. Article 7 of the Regulations for the Law on CJVs and Article 12 of the Regulations for the Law on EJV both contain provisions stating that ventures which "export unprocessed natural resources of the DPRK" will be prohibited. The extent of processing required in order to circumvent this prohibition is unclear. Again, processing ore into metal would presumably qualify, but processing into ore concentrate may not. Presumably, mined ore and metals are considered to be an "unprocessed natural resource." Hence, the prohibition would prevent any foreign enterprise from exporting ore. This provision seems to conflict with other provisions that specifically encourage "natural resource development"<sup>212</sup> (mining is included in this category<sup>213</sup>).

Another area that is highly relevant to the mining industry and is explicitly regulated is the area of environmental law. The DPRK Law on the Protection of the Environment speaks very generally to the goal of protecting and preserving the environment and is ineffective in providing clear guidance in this area.<sup>214</sup> Under this law, the AC is designated as the body responsible for fixing limits and standards on the allowable pollution levels and providing a unified direction to environmental protection work.<sup>215</sup> The law also requires a nonpermanent protection committee to be established under the authority of the AC to give collective guidance to environmental protection and take any necessary measures promptly.<sup>216</sup> But, because the environmental law was written in 1986, it is uncertain whether this nonpermanent protection committee still exists today. One article in these provisions explicitly mentions the mining industry and specifically prohibits mining in scenic and historic areas.<sup>217</sup>

Considering the investment solicited for the Danchon region, DPRK law respecting natural resources contains some significant gaps. Significantly, the concepts of *concession* and *license* are missing from current DPRK law. As described to us by officials of the mining enterprises and of the Mining Ministry, mines

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212. See, e.g., Foreign Investment Law, *supra* note 74, art. 7.

213. See Meetings, *supra* note 54.

214. See Law of the Democratic People's Republic of Korea on the Protection of the Environment.

215. See *id.* arts. 19, 39.

216. See *id.* art. 39.

217. See *id.* art. 14.

operate on the basis of decisions taken by the Mining Ministry as manifested in an *allotment*. Because the mining enterprise is itself a creature of the Mining Ministry, the question of terminating an allotment certificate never arises.

Foreign investors in the natural resources sector will almost certainly insist on a higher level of protection for any significant investment. This protection would certainly include the issuance of a license under clearly defined procedures that specify the rights that accompany the license, the holders ability to transfer it, the specific obligations of the license holder, the conditions under which the license can be revoked, and the ability of the license holder to assign or pledge the license in connection with project finance. Although North Korean officials suggested that concessions or licenses could be offered to foreign investors through foreign investment contracts that precisely regulate the rights of the investor, it is unclear whether this approach can really provide a satisfactory alternative to a license system.

Another issue which is of equal concern to investors, although less technically required in natural resource legislation, is the question of how a concession or license is awarded. Socialist economies in transition have generally gone through several stages on this issue, starting with so-called "contract negotiations" in which an investor is invited to negotiate the terms of an investment directly with state authorities that have discretion to issue a license when they are satisfied that the interests of the state are well served by the terms proposed. More recent legislation has moved clear of such approaches because of corruption concerns, and some of the most recent legislation, like Kyrgyzstan's new Mining Law, requires a competitive tender in each case before a license is issued. In the case of the Danchon province natural resource assets, it remains to be seen exactly how the North Korean authorities will approach the process of awarding rights among multiple contenders.

Finally, directly relevant to financing large-scale foreign investment is the existence of some law governing the pledging of assets. North Korean foreign investment legislation does not yet envision the possibility of encumbering assets located on Korean soil, whether movable or immovable. Legislation that is now at the drafting stage would evidently contemplate and regulate the terms of commercial lending in the Golden Triangle area. This

legislation was described to the authors, although not furnished to them. North Korean foreign economic policy experts appear to appreciate the need for a pledge device and to be familiar with the Chinese legislation from 1995, among other models. In the absence of both a pledge law and a central recording system for pledges, however, the task of securing capital finance for ventures in North Korea is likely to be a difficult one.

## V. *ALTERNATIVE APPROACHES*

In our discussions in Pyongyang with North Korean policy experts we noted any areas where North Korean law did not appear to anticipate or address some important concerns of foreign investors. In such cases, it was repeatedly pointed out to us that the government of North Korea may permit investments on terms different from those specified by the foreign investment legislation if good cause exists. Such an investment may take the form of a comprehensive foreign investment contract concluded with the participation of the North Korean government. In particular, tax holidays, tax rates, and tax issues such as accelerated depreciation, net operating loss carryforwards, and deductibility of expenses; questions of currency convertibility and use; the treatment of expatriate employees; environmental liability; the granting of concessions or licenses in natural resources; the terms for capital finance; export and import restrictions; and royalties and other fees were all noted as matters that might be suitable for a foreign investment contract. North Korean authorities stressed, however, that such vehicles would likely only be available for large, strategically significant investments by highly desirable investors.

An investor considering this alternative approach would be well advised to consider the precedent provided by the Korean Peninsula Energy Development Organization ("KEDO") contracts with the North Korean government. These agreements, that have been examined by the authors, grant extraordinary protections and privileges to KEDO and individual KEDO employees which are considerably more liberal than anything contemplated by the foreign investment legislation. Our discussions with KEDO representatives suggests that the North Koreans have upheld the bargain that they struck with KEDO.



*EXHIBIT A*

LIST OF FOREIGN INVESTMENT LAWS AND  
REGULATIONS OF THE DEMOCRATIC  
PEOPLE'S REPUBLIC  
OF KOREA<sup>218</sup>

**Vol. 1**

Law of the Democratic People's Republic of Korea on Free Economic and Trade Zone

Law of the Democratic People's Republic of Korea on Foreign Investment

Law of the Democratic People's Republic of Korea Law on Foreign Enterprises

Law of the Democratic People's Republic of Korea on Contractual Joint Venture

Law of the Democratic People's Republic of Korea on Foreign Investment-Business Enterprise and Foreign Individual Tax

Law of the Democratic People's Republic of Korea on Foreign Exchange Control

Law of the Democratic People's Republic of Korea on the Leasing of Land

**Vol. 2**

Law of the Democratic People's Republic of Korea on Foreign-Invested Bank

Customs Law of the Democratic People's Republic of Korea

Law of the Democratic People's Republic of Korea on Equity Joint Venture

Regulations on Immigration Procedure in the Free Economic and Trade Zone

Labour Regulations for Foreign-Invested Business

Regulations on Resident Representative Offices of Foreign Business in the Free Economic and Trade Zone

Enforcement Regulations for Foreign-Invested Business and Foreign Individual Tax Law

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218. Translated by the Committee for the Promotion of External Economic Cooperation of the Democratic People's Republic of Korea.

**Vol. 3**

Civil Proceedings Act of the Democratic People's Republic of Korea

Regulations for the Implementation of the D.P.R.K. on Wholly Foreign-owned Enterprises

Regulations on Free Trade Ports

Regulations on Foreigner's Stay and Residence in the Free Economic and Trade Zone

Regulations for the Implementation of the Law of the D.P.R.K. on Foreign Exchange Control

Implementing Regulations for the Law of the D.P.R.K. on the Leasing of Land

**Vol. 4**

Law of the Democratic People's Republic of Korea on the Protection of the Environment

Law of the DPRK on the External Economic Contract

Insurance Law of DPRK

Implementing Regulations for the Law on Foreign-Invested Bank

**Vol. 5**

Law of the Democratic People's Republic of Korea Law on External Civil Relations

Notary Public Law of the Democratic People's Republic of Korea

Implementing Regulations for the Law on Equity Joint Venture

Regulations on Forwarding Agency in the Free Economic and Trade Zone

Customs Regulations for Free Economic and Trade Zone

Regulations on Transfer and Mortgage of Buildings in the Free Economic and Trade Zone Annex

**Vol. 6**

Implementing Regulations for the Law on Contractual Joint Venture

Bookkeeping Regulations for Foreign-Invested Enterprises

Regulations on Naming of Foreign-Invested Enterprises

Regulations on the Registration of Foreign-Invested Enterprises

Regulations on Processing Trade in the Free Economic and Trade Zone

Regulations on Engraving and Registration of Logos (Common Seals) for Foreign-Invested Enterprises in the Free Economic and Trade Zone

Regulations on the Development and Management of Industrial Estates in the Free Economic and Trade Zone

Regulations on Advertisement in the Free Economic and Trade Zone

## **Vol. 7**

Regulations on Entrepot Trade in the Free Economic and Trade Zone

Regulations on Contract Construction in the Free Economic and Trade Zone

Regulations on Tourism in the Free Economic and Trade Zone

Regulations on Agent for Foreign Investor in the Free Economic and Trade Zone

Bookkeeping Regulations for Foreign-Invested Bank

Regulations on Certified Public Accounting for Foreign Invested Enterprise

Regulations on Currency Circulation in the Free Economic and Trade Zone

Regulations on Border Quarantine For the Free Economic and Trade Zone

Regulations on Traffic Inspection at the Boundary of the Free Economic and Trade Zone

Regulations on Registration of Vehicles in the Free Economic and Trade Zone

*Exhibit B*

No.	Item	Contractual Joint Venture	Equity Joint Venture	Foreign Enterprise
1	Number of Investors	No Restriction by Law	No Restriction by Law	No Restriction by Law
2	Operating Authority	Host Partner	Joint	Foreign Partner
3	Distribution and Profit	According to the Contract	According to the Share of Investment	No
4	Geographical Restriction	No	No	Rajin-Sonbong Zone
5	Sectoral Restriction	No	No	Publishing, news, Broadcasting & Communication
6	Approving Authority	Committee of Foreign Economy	Committee of Foreign Economy	<ul style="list-style-type: none"> <li>• Committee of Foreign Economy and Zone Authority</li> <li>• Examination and Approval</li> </ul>
7	Approval Process	<ul style="list-style-type: none"> <li>• Agreement of Draft Contract</li> <li>• Application for Establishment</li> <li>• Examination and Approval</li> </ul>	Same as Contractual Joint Venture	<ul style="list-style-type: none"> <li>• Presentation of Application to Zone Authority</li> <li>• Examination and Approval</li> </ul>
8	Transferability of Investment	<ul style="list-style-type: none"> <li>• Agreement of Both Sides</li> <li>• Contract of Transferability</li> <li>• Approval of Committee of Foreign Economy*</li> </ul>	Same as Contractual Joint Venture	<ul style="list-style-type: none"> <li>• Contract of Transferability</li> <li>• Approval of Committee of Foreign Economy*</li> </ul>
9	Limited Life	No Restriction by Law	No Restriction by Law	No Restriction by Law
10	Contracted Management	Decision of Joint Committee	Decision of Board of Directors	Decision of Foreigner
11	Conditions of Employment	<ul style="list-style-type: none"> <li>• Employing Contract of Foreign Technician</li> <li>• Approval of Authority</li> </ul>	<ul style="list-style-type: none"> <li>• Employing Contract of Local and Foreign Staff and Technicians</li> <li>• Approval of Authority</li> </ul>	Employing contract of Local and Foreign Staff
12	Example	Dokwolsan Contractual Joint Venture (sp2m) (Foreign side: Hong Kong Jomsyong Co.)	Samhung-Coast Equity Joint Venture (Rubber products e.g. sponge from mattresses)	No
* Several signed, but not yet implemented.				